IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2707 of 2007
With
CIVIL APPLICATION No. 7642 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHUVA NAGAR PALIKA - Appellant(s)
Versus
METRO CONSTRUCTION CO. - Defendant(s)

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Appearance :
Mrs. Sangeeta Pahwa, for M/S THAKKAR ASSOC. for Appellant(s) : 1,
MR ASHISH M DAGLI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/06/2007
ORAL JUDGMENT

By way of this First Appeal, the appellant herein, original-defendant, Mahuva Nagarpalika, through its Chief Officer, has

challenged the judgment and decree dated 8.5.2006 passed by the learned 7th Additional Senior Civil Judge, Bhavnagar in Special Civil Suit No. 144 of 1999 by which the learned trial Court has decreed the aforesaid Suit.

2. Considering the fact that though the defendants were permitted to file the reply on condition to pay/deposit Rs. 100 by way of costs the written statement/reply was filed but the amount of Rs. 100 way of costs was not deposited by the defendants and therefore the learned trial Court has not considered the reply and has proceeded further with the suit as if there is no reply on the part of the defendants and the learned trial Court has passed a decree as if the suit is not defended, there is a broad consensus between the learned advocates appearing on behalf of the respective parties that the impugned judgment and decree passed by the learned trial Court may be set aside and the matter be remanded back to the trial Court for its decision from the

stage of filing reply by the defendants on imposition of reasonable costs and on condition that the appellant herein, original-defendant may deposit 50% amount of security deposit with the trial Court and the original-plaintiff may be directed to withdraw the same on furnishing security without prejudice to the rights and contentions of the parties.

3. Considering the broad consensus between the parties, the impugned judgment and decree passed by the learned Trial Court dated 8.5.2006 in Special Civil Suit No. 144 of 1999 is hereby quashed and set aside and the matter is remanded back to the learned Trial Court for decision in accordance with law and on merits and the learned trial Court is directed to proceed further with the Suit from the stage of filing Reply of the defendants on condition that the appellant herein, original-defendant shall deposit 50% of the security deposit lying with them with the trial Court within the period of four weeks from

today and on such deposit the original-plaintiff is directed to withdraw the same on furnishing security to the satisfaction of the trial Court and such withdrawal will be without prejudice to rights and contentions of the respective parties and subject to ultimate outcome of the Special Civil Suit No. 144 of 1999. As there was a lapse on the part of the appellant, original-defendant and as agreed by the learned counsel appearing on behalf of the appellant, the appellant herein is directed to pay costs of this First Appeal which is quantified at Rs. 7,500 to be paid by the appellant herein original-defendant to the original-plaintiff by Account Payee cheque within the period of three weeks from today. Considering the fact that the Suit is of 1999, and even the Work Order was of 1995 and the dispute is pending since 1995, the learned Trial Court is directed to give priority to the same and is directed to decide and dispose of the aforesaid Suit, on remand, on or before 31st March 2008 subject to cooperation by the respective

parties and the respective parties are directed to cooperate with the learned Trial Court for early disposal of the aforesaid Suit. The appeal is allowed to the aforesaid extent.

4. In view of disposal of main First Appeal, no order in Civil Application No. 7642 of 2007.

[M.R. Shah, J.]

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